

LEGISLATIVE COMMITTEE MINUTES

# **HB1318**

# Bill as Introduced

HB 1318 - AS INTRODUCED

2016 SESSION

16-2376  
04/09

HOUSE BILL           **1318**

AN ACT               relative to sex offender registration.

SPONSORS:           Rep. Crawford, Carr. 4; Rep. Parker, Carr. 6; Rep. Webb, Rock. 6

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill changes the circumstances and criteria under which certain sex offenders may petition to have their name removed from the sex offender registry public list.

This bill is a request of the department of safety.

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                      Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                   relative to sex offender registration.

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

1           1 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6, III(a)(2)  
2 to read as follows:

3                   (2) A tier II offender may petition the superior court to have his or her name and  
4 information removed from the public list. The petition shall not be filed prior to the completion of  
5 all the terms and conditions of the sentence and in no case earlier than 15 years after the date of  
6 release. The petition shall be accompanied by a risk assessment, prepared by a qualified  
7 psychiatrist or psychologist at the offender's expense, ***which indicates that the offender poses***  
8 ***no risk of reoffending or causing public harm***. The court [may] ***shall*** grant the petition ***only***  
9 if the offender has not been convicted of any felony, class A misdemeanor, sex offense, or offense  
10 against a child, has successfully completed any periods of supervised release, probation, or parole,  
11 and has successfully completed an appropriate sex offender treatment program as determined by  
12 the court. If the court denies the petition, the offender shall not file another petition for 5 years  
13 from the date of denial.

14           2 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6, III(b) to  
15 read as follows:

16                   (b) Prior to granting any petition to remove an offender from the public list, the court  
17 shall provide notice to the county attorney who prosecuted the case, ***the sex offender unit in the***  
18 ***department of safety, division of state police***, the victim advocate, and the victim or victim's  
19 family, and permit those parties to be heard on the petition. Prior to any decision granting the  
20 application, the court shall provide the victim with the opportunity to address the court. The victim  
21 may appear personally, or by counsel, or may provide a written statement to reasonably express his  
22 or her views concerning the offense, the person responsible, and the need for maintaining the  
23 registration requirement. The judge shall consider the statements of the victim pursuant to this  
24 section when making a decision regarding the application. The judge shall grant the application,  
25 after a hearing, only where, in the opinion of the court, removal from the registration requirements  
26 will assist the individual in the individual's rehabilitation and will be consistent with the public  
27 welfare. ***The offender shall bear the burden of proof, by clear and convincing evidence,***  
28 ***that removal of the registration requirements will assist the offender in his or her***  
29 ***rehabilitation and will be consistent with the public welfare, and that he or she no longer***  
30 ***poses a risk sufficient to justify continued registration.***

31           3 Effective Date. This act shall take effect 60 days after its passage.

# Amendments



Amendment to HB 1318

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 Registration of Criminal Offenders; Duration of Registration. Amend RSA 651-B:6 to read as  
4 follows:

5 651-B:6 Duration of Registration.

6 I. *Subject to the provisions of paragraph IV*, all tier II or tier III offenders shall be  
7 registered for life.

8 II. All tier I offenders shall be registered for a 10-year period from the date of release,  
9 provided that any such registration period shall not run concurrently with any registration period  
10 resulting from a subsequent violation or attempted violation of an offense for which the person is  
11 required to register.

12 III.(a)~~[(1) All tier III offenders shall remain on the public list contained in RSA 651-B:7 for~~  
13 ~~life.~~

14 ~~[(2)]~~ A tier II *or tier III* offender may petition the superior court to have his or her  
15 name and information removed from the public list. The petition shall not be filed prior to the  
16 completion of all the terms and conditions of the sentence and in no case earlier than 15 years after  
17 the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified  
18 psychiatrist or psychologist at the offender's expense. The court may grant the petition *only* if the  
19 offender *is not under arrest or indictment for*, or has not been convicted of, any ~~[felony, class-A~~  
20 ~~misdemeanor,~~ sex offense~~;~~] or offense against a child, has successfully completed any periods of  
21 supervised release, probation, or parole, and has successfully completed an appropriate sex offender  
22 treatment program as determined by the court. If the court denies the petition, the offender shall  
23 not file another petition for 5 years from the date of denial.

24 ~~[(3)]~~ (b) A tier I offender may petition the superior court to have his or her name  
25 and other information removed from the public list. The petition shall not be filed prior to the  
26 completion of all the terms and conditions of the sentence and in no case earlier than 5 years after  
27 the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified  
28 psychiatrist or psychologist at the offender's expense. The court may grant the petition *only* if the  
29 offender *is not under arrest or indictment for*, or has not been convicted of, any ~~[felony, class-A~~  
30 ~~misdemeanor,~~ sexual offense~~;~~] or offense against a child, has successfully completed any periods of  
31 supervised release, probation, or parole, and has successfully completed an appropriate sex offender  
32 treatment program as determined by the court.



1           ~~[(b) Prior to granting any petition to remove an offender from the public list, the court~~  
2 ~~shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the~~  
3 ~~victim or victim's family, and permit those parties to be heard on the petition. Prior to any decision~~  
4 ~~granting the application, the court shall provide the victim with the opportunity to address the~~  
5 ~~court. The victim may appear personally, or by counsel, or may provide a written statement to~~  
6 ~~reasonably express his or her views concerning the offense, the person responsible, and the need for~~  
7 ~~maintaining the registration requirement. The judge shall consider the statements of the victim~~  
8 ~~pursuant to this section when making a decision regarding the application. The judge shall grant~~  
9 ~~the application, after a hearing, only where, in the opinion of the court, removal from the~~  
10 ~~registration requirements will assist the individual in the individual's rehabilitation and will be~~  
11 ~~consistent with the public welfare.]~~

12           *IV. A tier II or tier III offender may petition the superior court during his or her*  
13 *month of birth to be relieved from the registration requirements under this chapter. The*  
14 *petition shall include the petitioner's current address and information about each*  
15 *conviction for which he or she is required to register, including the nature of the offense,*  
16 *the sentence imposed, and the court and the jurisdiction in which the petitioner was*  
17 *convicted. The petition shall be accompanied by a certified copy of the petitioner's*  
18 *criminal history record from each jurisdiction in which he or she is required to register.*  
19 *The petition shall not be filed prior to the completion of all the terms and conditions of the*  
20 *sentence, including any supervision, and in no case earlier than 15 years after the date of*  
21 *release from a tier II offender's most recent conviction that required registration, and in*  
22 *the case of a tier III offender no earlier than 25 years after the date of release from the tier*  
23 *III offender's most recent conviction that required registration. The petition shall be*  
24 *accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at*  
25 *the offender's expense, which indicates that the offender is not a danger to the public and*  
26 *no longer poses a risk sufficient to justify continued registration. The court may grant the*  
27 *petition only if the petitioner is not under arrest or indictment for, or has been convicted*  
28 *of, any sex offense or offense against a child since the most recent qualifying conviction*  
29 *requiring registration, has successfully completed any period of supervised release,*  
30 *probation, or parole, has successfully completed an appropriate sex offender treatment*  
31 *program as determined by the court, has demonstrated compliance with registration*  
32 *requirements for 15 years, and he or she is no longer a danger to the public and no longer*  
33 *poses a risk sufficient to justify continued registration. The petition shall be filed in the*  
34 *county where the most recent predicate conviction occurred, except if the most recent*  
35 *conviction occurred in another state or jurisdiction, the petition shall be filed in the*  
36 *county where the petitioner resides. If the court denies the petition, the petitioner shall*  
37 *not file another petition under this section for 5 years from the date of the court's denial.*



1 *Such petition shall not be filed or addressed as part of a criminal case.*

2 *V.(a) Prior to granting any petition to remove an offender from the public list, the*  
3 *court shall provide notice to the county attorney who prosecuted the case, the victim*  
4 *advocate, and the victim or victim's family, and permit those parties to be heard on the*  
5 *petition. Prior to any decision granting the petition, the court shall provide the victim*  
6 *with the opportunity to address the court. The victim may appear personally, or through*  
7 *a representative, or may provide a written statement to reasonably express his or her views*  
8 *concerning the offense, the person responsible, and the need for maintaining the*  
9 *registration requirement. The judge shall consider the statements of the victim pursuant*  
10 *to this section when making a decision regarding the petition. The judge shall grant the*  
11 *petition, after a hearing, only where, in the opinion of the court, removal from the public*  
12 *list will assist the individual in the individual's rehabilitation and will be consistent with*  
13 *the public welfare.*

14 *(b) Prior to granting any petition to relieve an offender from the registration*  
15 *requirements under this chapter, the court shall hold a hearing on the petition. The court*  
16 *shall provide notice of the hearing at least 60 days prior to the hearing to the county*  
17 *attorney who prosecuted the most recent offense requiring registration, the victim*  
18 *advocate, the victim or victim's family, the department of safety sex offender unit, and the*  
19 *department of corrections, and shall permit those parties to be heard on the petition. If*  
20 *the most recent conviction requiring registration is an out of state conviction, notice shall*  
21 *be given to the county attorney in the county where the offender is currently residing.*  
22 *Prior to any decision granting the petition, the court shall provide the victim or victim's*  
23 *family with the opportunity to address the court. The victim or victim's family may*  
24 *appear personally, or through a representative, or may provide a written statement to*  
25 *reasonably express his or her views concerning the offense, the person responsible, and the*  
26 *need for maintaining the registration requirement. The judge shall consider the*  
27 *statements of the victim or victim's family pursuant to this section when rendering a*  
28 *decision regarding the petition. The judge shall grant the petition, after a hearing, only*  
29 *where, in the opinion of the court, the petitioner has proven by clear and convincing*  
30 *evidence that he or she no longer poses a risk sufficient to justify continued registration*  
31 *and is not a danger to the public.*

32 *[IV-] VI. Any offender who was convicted before January 1, 1994, and who has fully*  
33 *served all aspects of his or her sentence and has not re-offended may petition the superior*  
34 *court to be relieved from the requirements of registration. The petition shall be subject to*  
35 *the requirements of paragraph IV, except that the offender shall not be required to wait*  
36 *the 15 or 25 years, or for the month of his or her birth. The hearing shall be held in*  
37 *accordance with the requirements of subparagraph V(b). The offender shall pay the costs*





1 *of the legal service in connection with hearing. The petitioner shall have the right to*  
2 *counsel. If the court denies the petition, the offender shall not file another petition under*  
3 *this section for 5 years from the date of the court's denial.*

4 VII. Registration of any juvenile required to register pursuant to RSA 651-B:1, XI(a)(3) or  
5 (4) shall end when the juvenile turns 17 years of age unless the court which adjudicated the  
6 juvenile as a delinquent retains jurisdiction over the juvenile pursuant to RSA 169-B:4, V, in which  
7 case registration of the juvenile shall end when the court terminates jurisdiction over the juvenile's  
8 case. When the registration of a juvenile terminates, the department shall remove information  
9 relating to the juvenile from the SOR system and records of the juvenile's registration shall be  
10 handled in accordance with RSA 169-B:35 and RSA 169-B:36.

11 2 Registration of Criminal Offenders; Hearing. Amend RSA 651-B:10, I to read as follows:

12 I. Any offender required to register for an offense committed in another state, country,  
13 territory, or tribal territory, or under federal law that is determined to be a reasonably equivalent  
14 offense to an offense listed *in* RSA 651-B:1, V(a) or RSA 651-B:1, VII(a) or (b) may appeal that  
15 determination to the commissioner. The offender shall, within 10 days of notification, request a  
16 hearing on the matter before the commissioner. If such a request is made, the commissioner shall  
17 promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. [The  
18 offender] *Either party* shall have the right to appeal the commissioner's decision in superior court.

19 3 Effective Date. This act shall take effect 60 days after its passage.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1318

**BILL TITLE:** relative to sex offender registration.

**DATE:** February 17, 2016

**LOB ROOM:** 204

**Time Public Hearing Called to Order:** 11:30 a.m.

**Time Adjourned:**

**Committee Members:** Reps. Tholl, Welch, Marston, Burt, Barnes, Comeau, Martin, Green, Pantelakos, Berube, Robertson, Cushing, Hirsch, Mangipudi, DiSesa and Fields

**Bill Sponsors:**

Rep. Crawford

Rep. Parker

Rep. Webb

TESTIMONY

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

#1. Rep. David Welch introduced the bill in the absence of sponsors

Told committee about an amendment proposed by the Dept. of Safety.

#2. Karen Schlitzer and Marta Modigliani NH AG's Office Supports with Amendment

See written testimony #2

Explained background: the Doe case prompted the bill.

Went through the bill and explained the changes.

Lifetime registration applied to those who offended before the registry existed.

The court deemed that those assigned need a path off the list.

This bill specifically addresses Tier III in response to the court decision in the Doe case.

\* #3. Gilles Bissonnette NH ACLU Concerns with language but supports the intent

See written testimony #3

#4. Robin Malone NHACDL Endorses the amendment

Concerns over "clear and convincing" evidence that is too harsh a standard for evidence.

Respectful of victims, but fairness is important.

Supports removal of language (in the amendment)

Sees inconsistent language in bill --- regarding two references to lack of risk, based on assessment. Many assessments exist, but which ones will be used?

Prefers no longer posing "sufficient" risk  
Should applicants be offered public legal counsel?  
Costs can be a burden to applicants.

?what would be the mechanism for providing public defense for applicants?  
RM will do some research

#5. Wanda Duryea  
Opposes

Citizens for Criminal Justice Reform

Believes that if the Constitution has been violated, then why should applicants have to pay for representation and meeting the requirements of the appeal process?

Believes this bill creates undo financial hardship on anyone who attempts to appeal placement on the registry.

Believes the public registry is punitive.

When something is deemed unconstitutional, the remedy should be swift and comprehensive, not prolonged and costly.

Believes the registry is not a deterrent to re-offending.

#6. Christopher

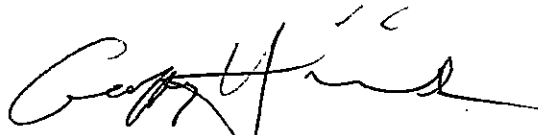
representing self

Opposes

Appreciates the attempt at providing a path to removal from registry, but this bill poses too steep a hill to climb in order to appeal.

If his constitutional rights were violated, why should he pay for the remedy?

**See Rep. Fields' notes for rest of hearing**



Geoffrey Hirsch, Asst. Clerk



Dennis Fields, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1318

BILL TITLE: relative to sex offender registration.

DATE: 2/17/16

ROOM: 204

Time Public Hearing Called to Order: 11:30 AM

Time Adjourned: \_\_\_\_\_

(please circle if present)

Committee Members: Reps. Tholl, Welch, Fesh, Marston, Burt, S. Sweeney, Barnes, Comeau, Fisher, Martin, Parker, Green, Pantelakos, Berube, Robertson, Cushing, Hirsch, O'Hearne, Mangipudi, DiSesa and Fields

Bill Sponsors:  
Rep. Crawford

Rep. Parker

Rep. Webb

TESTIMONY

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

CORD 1 WELCH PRESENTED THE BILL,  
CORD 2 KAREN SCHLITZER w MARTA MUDIG LIANO ATTORNEY GENERAL'S OFFICE. WRITING TESTIMONY PRESENTED 2 AMENDMENTS  
1. MANGIPUDI = WHO PAYS FOR THIS NEW AMENDMENT?  
2. KAREN = PERSON ASKING FOR PETITION. WOULD BE LIABLE FOR COSTS ONLY TO TIER 1.  
3. HIRSCH = WHY DO WE NEED PUBLIC INVOLVED WITH THIS ISSUE SET OFF OFFENDERS.  
4. KAREN = SO THE PUBLIC KNOW WHO THE OFFENDER IS, HOW PUBLIC KNOWLEDGE TO KNOW OFFENDER IS OFF LIST NOT A DANGER.

CORD 3 GILLES BISSONNETTE = WRITING TESTIMONY, ACLU.  
CORD 4 RUBIN MELANE = SUPPORTS 2nd AMEND. BURDEN OF PROOF

PAR PONDANCE OF EVIDENCE CHANGE DEFENDANT PETITION NOT A DANGER NOT POSSES A RISK, COUNCIL SHOULD BE ALONG COUNCIL TO BE REPRESENTATIVE.

CORD 5 WANDA DURYEA = OPPOSE = ITS NOT HER SONS JOB TO PAY FOR CONSTITUTIONAL RIGHTS TO GET OFF LIST OF OFFENDERS THIS IS UNCONSTITUTIONAL.

CORD 6 CHRIS = HE IS LOOKING FOR AN OPTION THIS BILL WILL NOT HELP NO MONEY TO HELP HIMSELF.

CORD 7 JOSEPH BROOKS = OPPOSED BILL.

over →

Y1900+  
CHRIS DORNIB = OPPOSED BILL

CRAB

THE OFFENDERS MUST NOT PAY TO GET OFF  
"WRITTEN TESTIMONY"

CHAIR READ BLK SHEET.



# Sub-Committee Actions

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

**SUBCOMMITTEE WORK SESSION** on HB 1318

**BILL TITLE:** relative to sex offender registration.

**DATE:** February 29, 2016

**Subcommittee Members:** Reps. Pantelakos, Cushing and Barnes

**Comments and Recommendations:** The committee reviewed the DOS proposed amendment and how it failed to address the John Doe registrants.

**MOTIONS:** OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Pantelakos

Seconded by Rep. Cushing

AM Vote: 3-0

Amendment # 2016-0819h

Respectfully submitted,

Rep. Arthur Barnes  
Subcommittee Chairman

3/1/16  
Reps. Barnes, Pantelakos and Cushing

Discussed the language and amended it to include Section VI to cover the "Doe registrants."

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

SUBCOMMITTEE WORK SESSION on HB 1318

BILL TITLE: relative to sex offender registration.

DATE: February 29, 2016

Subcommittee Members: Reps. Barnes, Pantelakos and Cushing

Comments and Recommendations:

THE COMMITTEE REVIEWED THE DOS PROPOSED AMENDMENTS AND HOW IT FAILED TO ADDRESS THE JOHN DOE REGISTRANTS.

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. PANTELAKOS Seconded by Rep. CUSHING AM Vote: 3-0

Adoption of Amendment # 2016-0819H

Moved by Rep. Seconded by Rep. Vote:

Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Seconded by Rep. AM Vote:

Adoption of Amendment #

Moved by Rep. Seconded by Rep. Vote:

Amendment Adopted Amendment Failed

Respectfully submitted,

Rep. [Signature] Subcommittee Chairman/Clerk

3/1/16 BARNES, PANTELAKOS + CUSHING - DISCUSSED THE LANGUAGE AND AMENDMENTED IT TO INCLUDE SECTION VI TO COVER THE "DOE REGISTRANTS"

# Testimony

CH. 121

**I. Amend RSA 651-B:6, I to read as follows:**

I. All tier II or tier III offenders shall be registered for life, subject to the provisions of section IV.

**II. Amend RSA 651-B:6, III to read as follows:**

III. (a) ~~(1) All tier III offenders shall remain on the public list contained in RSA 651-B:7 for life.~~

~~(2) A tier II or tier III offender may petition the superior court to have his or her name and information removed from the public list. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 15 years after the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. The court may grant the petition only if the offender is not currently under arrest or indictment for, or has not been convicted of any felony, class A misdemeanor, sex offense, or offense against a child, has successfully completed any periods of supervised release, probation, or parole, and has successfully completed an appropriate sex offender treatment program as determined by the court. If the court denies the petition, the offender shall not file another petition for 5 years from the date of denial.~~

~~(3b) A tier I offender may petition the superior court to have his or her name and other information removed from the public list. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 5 years after the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. The court may grant the petition only if the offender is not currently under arrest or indictment for, or has not been convicted of any felony, class A misdemeanor, sexual offense, or offense against a child, has successfully completed any periods of supervised release, probation, or parole, and has successfully completed an appropriate sex offender treatment program as determined by the court.~~

~~(c) Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family, and permit those parties to be heard on the petition. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally, or by counsel, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the registration requirements will assist the individual in the individual's rehabilitation and will be consistent with the public welfare.~~

IV. A tier II or tier III offender may petition the superior court during his or her month of birth to be relieved from the requirements of registration under this chapter. The

petition must include the petitioner's current address and information about each conviction for which he or she is required to register, including the nature of the offense, the sentence imposed, and the court and state of conviction. The petition shall be accompanied by a certified copy of the petitioner's criminal history record from each state of conviction for which he or she is required to register. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence, including any supervision, and in no case earlier than 15 years after the date of release from a tier II offender's most recent conviction that required registration, and in the case of a tier III offender no earlier than 25 years after the date of release from the tier III offender's most recent conviction that required registration. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense, which indicates that the offender is not a danger to the public and no longer poses a risk sufficient to justify continued registration. The court may grant the petition only if the offender is not currently under arrest or indictment for, or has been convicted of, any sex offense, or offense against a child since the most recent qualifying registration triggering conviction, has successfully completed any periods of supervised release, probation, or parole, has successfully completed an appropriate sex offender treatment program as determined by the court, has demonstrated compliance with registration requirements for 15 years, and he or she is no longer a danger to the public and no longer poses a risk sufficient to justify continued registration. The petition must be filed in the county where the most recent predicate conviction occurred, except if the most recent conviction occurred in another state or jurisdiction, the petition shall be filed in the county where the offender resides. If the court denies the petition, the offender shall not file another petition under this section for 5 years from the date of the court's denial. Such petitions may not be filed or addressed as part of a criminal case.

V. (a) Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family, and permit those parties to be heard on the petition. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally, or ~~by-counsel~~ through a representative, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the public list ~~registration requirements~~ will assist the individual in the individual's rehabilitation and will be consistent with the public welfare.

(b) Prior to granting any petition to relieve an offender from the registration requirements under this chapter, the court shall hold a hearing on the petition. The court shall provide notice of the hearing at least 60 days prior to the hearing to the county attorney who prosecuted the most recent triggering offense, the victim advocate, and the victim or victim's family, the department of safety sex offender unit, the department of corrections, and permit those parties to be heard on the petition. If the most recent triggering conviction is an out of state conviction, notice shall be given to the county

CORDI

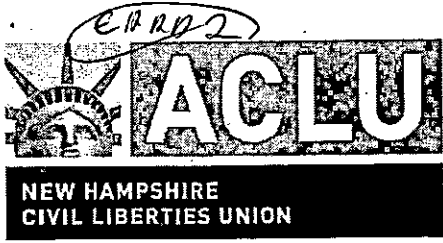
attorney in the county where the offender is currently residing. Prior to any decision granting the petition, the court shall provide the victim or victim's family with the opportunity to address the court. The victim or victim's family may appear personally, or through a representative, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim or victim's family pursuant to this section when rendering a decision regarding the petition. The judge shall grant the petition, after a hearing, only where, in the opinion of the court, the offender has proven by clear and convincing evidence that he or she no longer poses a risk sufficient to justify continued registration and is not a danger to the public.

VI. Registration of any juvenile required to register pursuant to RSA 651-B:1, XI(a)(3) or (4) shall end when the juvenile turns 17 years of age unless the court which adjudicated the juvenile as a delinquent retains jurisdiction over the juvenile pursuant to RSA 169-B:4, V, in which case registration of the juvenile shall end when the court terminates jurisdiction over the juvenile's case. When the registration of a juvenile terminates, the department shall remove information relating to the juvenile from the SOR system and records of the juvenile's registration shall be handled in accordance with RSA 169-B:35 and RSA 169-B:36.

**III. Amend RSA 651-B:10, I to read as follows:**

I. Any offender required to register for an offense committed in another state, country, territory, or tribal territory, or under federal law that is determined to be reasonably equivalent offense to an offense listed in RSA 651-B:1, V(A) or RSA 651-B:1, VII(a) or (b) may appeal that determination to the commissioner. The offender shall, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. ~~The offender~~ Either party shall have the right to appeal the commissioner's decision in superior court.

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



# AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

18 Low Avenue  
Concord, New Hampshire 03301  
603-225-3080  
www.ACLU-NH.org

DEVON CHAFFEE  
EXECUTIVE DIRECTOR

From: Gilles Bissonnette, Legal Director for the American Civil Liberties Union of New Hampshire  
To: The Honorable Members of the Criminal Justice and Public Safety Committee of the New Hampshire House of Representatives  
Date: February 17, 2016  
Re: ACLU'S Concerns As To Hearing Procedures in Section II, Parts IV and V(b) of Department of Safety's Proposed Amendment to HB1318, as Applied to Registrants Eligible for Removal Hearings Under *Doe*

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties and civil rights throughout New Hampshire, including the right to due process and fundamental fairness. As part of its work, the ACLU has often taken unpopular cases, including on behalf of individuals convicted of sex offenses. This includes the case *Doe v. State*, 167 N.H. 382 (2015), which led to the creation of the Department of Safety's proposed amendment to this bill (particularly, Section II, Parts IV and V(b)).

The ACLU supports the intent of Section II, Parts IV and V(b) of the proposed amendment (hereinafter, "the amendment") to, in part, memorialize in statute the remedy created in *Doe v. State*, 167 N.H. 382 (2015). However, this amendment, as written, is inconsistent with the remedy created in the *Doe* decision and fails to provide a fair hearing process with respect to the registrants who are constitutionally-entitled to a hearing under *Doe* – registrants who, by definition, have not reoffended in decades. The ACLU has provided specific modifications for the Committee's consideration that address these concerns. I have also enclosed the *Doe* opinion.

I. **Background.** The *Doe* decision applies, in part, to registrants who were convicted *before* 1994 and who have fully served all aspects of their conviction without ever reoffending for over 22 years. When these individuals were convicted before 1994 they had no notice that the legislature would later retroactively apply the registration's onerous obligations to them. As the *Doe* Court concluded, they should have a right to a second chance through a meaningful hearing process that complies with fundamental fairness and the New Hampshire Constitution. As any registrant will tell you, the registration regime impedes the reentry and reintegration of people who have served their debt to society. This is an important consideration because, contrary to the popular notion that sexual offenders remain at risk of re-offending through their lifespan, the longer offenders remain offense-free in the community, the less likely they are to re-offend sexually. Eventually, they are less likely to reoffend than a non-sexual offender is to commit an "out of the blue" sexual offense.<sup>1</sup>

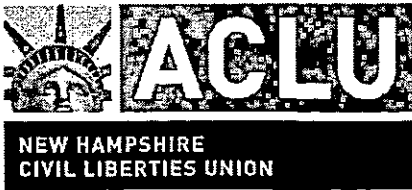
## II. *Doe* Litigation.

A. **Holding.** On February 12, 2015, the New Hampshire Supreme Court held that Chapter 651-B's retroactive lifetime registration requirements were "punitive in effect," and therefore unconstitutional, as applied to registrants who were convicted *before* the registry became punitive, including those convicted before the registry went into effect on January 1, 1994. See Page 25.

For example, according to the Court, the "broad dissemination" of information on the public registry—including information that is publicly available elsewhere—"stigmatizes registrants and can lead to further harm, such as 'vigilante justice.'" See Page 19. The Court added: "Displaying this information on the internet is also significantly different from maintaining records elsewhere. Although the information that the petitioner is required to report may not be entirely private, it is generally not readily accessible to any member of the public, at any time, for any reason .... The act also makes the information readily and instantly accessible to anyone who wants it, which is not often the case for other public information and records." See Page 25. As the Court noted: "[W]e agree with the Supreme Judicial Court of Maine that 'it belies common sense to suggest that a newly imposed lifetime

<sup>1</sup> See, e.g., R. Karl Hanson, et al., "High-Risk Sex Offenders May Not Be High Risk Forever," *Journal of Interpersonal Violence* (March 2014), available at <http://jiv.sagepub.com/content/29/15/2792>. For example, after 10-14 years in the community without committing another sex offense, medium-risk offenders pose no more risk of recidivism than individuals who have never been arrested for a sex-related offense but have been arrested for some other crime. After 17 years without a new arrest for a sex-related offense, high-risk offenders pose no more risk of committing a new sex offense than do individuals who have never been arrested for a sex-related offense but have been arrested for some other crime. This data is available upon request.





**AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE**

18 Low Avenue  
Concord, New Hampshire 03301  
603-225-3080

DEVON CHAFFEE  
EXECUTIVE DIRECTOR  
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obligation to report to a police station every ninety days to verify one's identification, residence, and school, and to submit to fingerprinting and provide a current photograph, is not a substantial disability or restraint." *Id.* (quoting *State v. Letalien*, 985 A.2d 4, 23-25 (Me. 2009)).

**B. The Constitutional Right At Stake.** This case was decided under Part I, Article 23 of the New Hampshire Constitution, which bars retrospective laws. As Article 23 states: "[R]etrospective laws are highly injurious, oppressive, and unjust. No such laws, therefore, should be made, either for ... the punishment of offenses." See N.H. Const. pt. I, art. 23. The United States Supreme Court has observed that the analogous federal Ex Post Facto Clause not only ensures that individuals have "fair warning" about the effect of criminal statutes, but also "restricts governmental power by restraining arbitrary and potentially vindictive legislation." *Landgraf v. Usi Film Prods.*, 511 U.S. 244, 266 (1994) (quoting *Weaver v. Graham*, 450 U.S. 24, 29 (1981)).

**C. Remedy.** As a remedy to this constitutional violation, the Court concluded that the petitioner and those similarly situated must be "promptly given an opportunity for either a court hearing, or an administrative hearing subject to judicial review, at which he is permitted to demonstrate that he no longer poses a risk sufficient to justify continued registration." See Page 26. The Court added: "If, after such hearing, it is determined that he has not made the required showing, he must continue to comply with the act, but thereafter he must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary to protect the public." *Id.*

**D. The Registrants Impacted.** This constitutionally-required remedy applies to all lifetime Tier II and III registrants who, like the petitioner, were convicted before the registry was retroactively applied to them on January 1, 1994. This remedy also applies to lifetime Tier II and III registrants who were convicted after January 1, 1994, but before the registry and its lifetime requirements ultimately became punitive at some point after 1994. The contours of this second affected group are yet undefined by the courts.<sup>2</sup>

**III. Specific Concerns With Department of Safety's Amendment As Applied to Registrants Eligible Under Doe.**

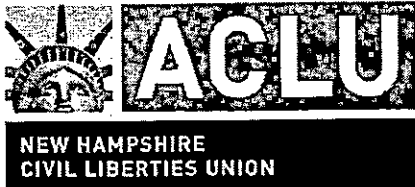
**A. For Registrants Eligible for Hearings Under Doe, Parts IV and V(b) of the Amendment Use An Inappropriate Standard Under Doe.** Section IV and V(b) of the amendment allow for removal from registry obligations if the registrant "is no longer a danger to the public and no longer poses a risk sufficient to justify continued registration." The "no longer a danger to the public" standard is improper with respect to registrants eligible for a hearing under *Doe*. While the *Doe* decision does use those words later in the opinion, it was in the context of discussing the "no longer poses a risk sufficient to justify continued registration" standard that is constitutionally required. The Court was not creating a separate and distinct "no danger to the public" standard.

And this makes sense. As the *Doe* Court explains, the focus at the hearing should be on whether the registrant is a danger to commit a registerable offense in the future, thereby justifying the registrant's continued placement on the registry – not whether the registrant is likely to commit an offense in the future that is non-registerable. For example, the amendment's "no danger to the public" standard deems relevant to the inquiry whether a registrant has been convicted of marijuana possession or disorderly conduct; these offenses have nothing to do with the public safety goals of the sex offender registry and therefore should have nothing to do with the analysis as to whether a registrant should be removed from the registry. To include them punitively creates a higher bar for removal. This is why the Court uses the phrase "sufficient to justify continued registration."

Proposed Amendment: As to registrants who are eligible for hearings under *Doe*, the judge shall grant the application if the registrant "no longer poses a risk to commit a registerable offense sufficient to justify continued registration." The language could also say: As to registrants who are eligible for hearings under *Doe*, the judge shall grant the application if the registrant "no longer poses a risk sufficient to justify continued registration."

**B. The Amendment's 15-Year and 25-Year Waiting Periods in Part IV Improperly and Unconstitutionally Deprive Hearings to Some Registrants Eligible for Hearings Under Doe.** The 15-year and 25-year waiting periods are problematic with

<sup>2</sup> See Page 25 ("[I]t is not realistic for us to attempt to parse the various amendments [after 1994] to determine precisely at what point the act became sufficiently punitive as to prohibit its retroactive application."); see also *id.* ("No one amendment or provision is determinative, but the aggregate effects of the statute lead us to our decision.").



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respect to some registrants who are eligible for *Doe* hearings. This is true for two reasons. First, under this language for example, a Tier III registrant convicted in 1993 would not be eligible for a hearing until 2018. This is improper, as *Doe* requires that this eligible registrant be given the opportunity to submit a petition now, not wait two years.

Second, the Committee should be aware that the *Doe* decision impacted not just lifetime registrants convicted before the registry went into effect in 1994, but also lifetime registrants who were convicted after January 1, 1994, but before the registry and its lifetime requirements ultimately became “punitive” at some point after 1994. Though the contours of this group of eligible registrants is undefined, this language negatively impacts their constitutional rights by making them wait before filing a petition—a waiting period that exists nowhere in the *Doe* decision.

Proposed Amendment: As to registrants who are eligible for hearings under *Doe*, the language “[t]he petition shall not be filed prior to the completion of all the terms and conditions of the sentence, including any supervision, and in no case earlier than 15 years after the date of release from a tier II offender’s most recent conviction that required registration, and in the case of a tier III offender no earlier than 25 years after the date of release from the tier III offender’s most recent conviction that required registration” should not apply.

**C. Consideration of Whether A Registrant “Has Demonstrated Compliance with Registration Requirements for 15 Years” in Part IV Is Improper for Registrants Eligible for Hearings Under *Doe*.** The amendment states, in part, that the Court may grant the petition only if the offender “has demonstrated compliance with registration requirements for 15 years.” This consideration is inappropriate for registrants entitled to a hearing under *Doe*, as the decision makes no reference to such criteria. Failing to comply with the registry is not a proxy for determining whether a registrant is likely to commit a registerable offense in the future, especially where it is so easy for a registrant to inadvertently/negligently fail to comply with the registry’s onerous obligations. Indeed, in *Doe*, the Court explained that dangerousness was the standard, not whether a registrant previously failed to provide information under the registry.

Proposed Amendment: As to registrants who are eligible for hearings under *Doe*, the language “has demonstrated compliance with registration requirements for 15 years” should not apply.

**D. Part V(b) of the Amendment’s Requirement That Victim’s Testimony “Shall” Be Considered As Evidence, Including Without Cross Examination, Violates Separation of Powers and Fundamental Fairness for Registrants Eligible for a *Doe* Hearing.** The amendment states that “[p]rior to any decision granting the petition, the court shall provide the victim or victim’s family with the opportunity to address the court. The victim or victim’s family may appear personally, or through a representative, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim or victim’s family pursuant to this section when rendering a decision regarding the petition.”

While it is entirely appropriate for the victim to be notified consistent with the Victim’s Bill of Rights (RSA 21-M:8-k), the last sentence errs by infringing upon the courts’ inherent duty to decide what evidence is to be considered under the facts and circumstances of each case. In short, what evidence the court can consider is a “core judicial function.”<sup>3</sup> To address this problem, the last sentence should say “may,” which is also consistent with the last sentence of RSA 651:4-a (which was most recently amended last year in HB 225 sponsored by Rep. Cushing).

In addition, permitting the victim to proffer evidence, without the benefit of cross-examination, creates due process and fundamental fairness concerns. As the *Doe* Court concluded, such hearings “must meet standards of fundamental fairness.” See Page 26. As this is a hearing where formal evidence is heard and cross-examination is conducted (unlike a sentencing hearing), the evidentiary standard needs to be the same for the evidence proffered by the State and the evidence proffered by the petitioner — especially where the petitioner has the burden. However, the amendment, while appropriately allowing the State to cross-examine

<sup>3</sup> See *Opinion of the Justices (Prior Sexual Assault Evidence)*, 141 N.H. 562, 566-78 (1997) (concluding that a proposed law creating a rebuttable presumption in favor of admitting evidence of a defendant’s prior sexual assaults in certain sexual assault cases violated separation of powers because it “usurps the judicial function of making relevancy determinations by creating a rebuttable presumption in favor of admissibility without regard for the particular facts or circumstances of a case.”).



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the petitioner and his/her expert, does not permit the petitioner to cross-examine evidence presented by the victim. Accordingly, this section violates fundamental fairness. All evidence in the hearing should be subject to the same standard.

Proposed Amendment: Our proposed amendment reflecting these concerns is the following: "Prior to any decision granting the petition, the court shall provide the victim or victim's family with the opportunity to address the court. The victim or victim's family may appear personally or by deposition. ~~or through a representative, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement.~~ The judge shall may consider the statements of the victim or victim's family pursuant to this section when rendering a decision regarding the petition."

**E. Clear and Convincing Evidence Standard for Registrants Eligible for a *Doe* Hearing in Part V(b):** As to registrants eligible for hearings under *Doe*, the standard should be "by a preponderance of the evidence," not by "clear and convincing evidence." ~~A "clear and convincing evidence" standard is too high for registrants convicted before the registry became "punitive,"~~ (and have not reoffended), and who, as a result, have already had their constitutional rights violated. This "preponderance of the evidence" standard is routinely used in civil case and judges are well familiar with it.

Proposed Amendment: As to registrants who are eligible for hearings under *Doe*, the language "clear and convincing evidence" should be replaced with "by a preponderance of the evidence."

**F. 5-Year Waiting Period for Registrants Eligible for a *Doe* Hearing.** As the *Doe* Court held, "[i]f, after such hearing, it is determined that he has not made the required showing, he must continue to comply with the act, but thereafter he must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary to protect the public." See Page 26.

As to registrants who are eligible for hearings under *Doe*, a five-year wait does not comply with *Doe's* "reasonable" standard, and instead is excessive and punitive. This 5-year waiting period is modeled after the 5-year waiting period under RSA 651-B:6(III)(a)(2) for Tier II lifetime registrants who are unsuccessful in obtaining removal from the public list. However, this statute is not an appropriate guide because the registrants entitled to *Doe* relief (i) have, by definition, not reoffended in over 22 years, and (ii) and been the subject of an unconstitutional regime for decades where they subjected to registry requirements after they were convicted. This 5-year waiting period should be shortened.

Thank you for considering these concerns and proposed changes. If you have any questions, do not hesitate to contact me.

**I. Amend RSA 651-B:6, I to read as follows:**

I. All tier II or tier III offenders shall be registered for life, subject to the provisions of section IV.

**II. Amend RSA 651-B:6, III to read as follows:**

~~III. (a) (1) All tier III offenders shall remain on the public list contained in RSA 651-B:7 for life.~~

(2) A tier II or tier III offender may petition the superior court to have his or her name and information removed from the public list. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 15 years after the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. The court may grant the petition only if the offender is not currently under arrest or indictment for, or has not been convicted of any felony, class A misdemeanor, sex offense, or offense against a child, has successfully completed any periods of supervised release, probation, or parole, and has successfully completed an appropriate sex offender treatment program as determined by the court. If the court denies the petition, the offender shall not file another petition for 5 years from the date of denial.

(3b) A tier I offender may petition the superior court to have his or her name and other information removed from the public list. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence and in no case earlier than 5 years after the date of release. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense. The court may grant the petition only if the offender is not currently under arrest or indictment for, or has not been convicted of any felony, class A misdemeanor, sexual offense, or offense against a child, has successfully completed any periods of supervised release, probation, or parole, and has successfully completed an appropriate sex offender treatment program as determined by the court.

~~(e) Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family, and permit those parties to be heard on the petition. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally, or by counsel, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the registration requirements will assist the individual in the individual's rehabilitation and will be consistent with the public welfare.~~

IV. A tier II or tier III offender may petition the superior court during his or her month of birth to be relieved from the requirements of registration under this chapter. The

petition must include the petitioner's current address and information about each conviction for which he or she is required to register, including the nature of the offense, the sentence imposed, and the court and state of conviction. The petition shall be accompanied by a certified copy of the petitioner's criminal history record from each state of conviction for which he or she is required to register. The petition shall not be filed prior to the completion of all the terms and conditions of the sentence, including any supervision, and in no case earlier than 15 years after the date of release from a tier II offender's most recent conviction that required registration, and in the case of a tier III offender no earlier than 25 years after the date of release from the tier III offender's most recent conviction that required registration. The petition shall be accompanied by a risk assessment prepared by a qualified psychiatrist or psychologist at the offender's expense, which indicates that the offender is not a danger to the public and no longer poses a risk sufficient to justify continued registration. The court may grant the petition only if the offender is not currently under arrest or indictment for, or has been convicted of, any sex offense, or offense against a child since the most recent qualifying registration triggering conviction, has successfully completed any periods of supervised release, probation, or parole, has successfully completed an appropriate sex offender treatment program as determined by the court, has demonstrated compliance with registration requirements for 15 years, and he or she is no longer a danger to the public and no longer poses a risk sufficient to justify continued registration. The petition must be filed in the county where the most recent predicate conviction occurred, except if the most recent conviction occurred in another state or jurisdiction, the petition shall be filed in the county where the offender resides. If the court denies the petition, the offender shall not file another petition under this section for 5 years from the date of the court's denial. Such petitions may not be filed or addressed as part of a criminal case.

V. (a) Prior to granting any petition to remove an offender from the public list, the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family, and permit those parties to be heard on the petition. Prior to any decision granting the application, the court shall provide the victim with the opportunity to address the court. The victim may appear personally, or by counsel through a representative, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim pursuant to this section when making a decision regarding the application. The judge shall grant the application, after a hearing, only where, in the opinion of the court, removal from the public list registration requirements will assist the individual in the individual's rehabilitation and will be consistent with the public welfare.

(b) Prior to granting any petition to relieve an offender from the registration requirements under this chapter, the court shall hold a hearing on the petition. The court shall provide notice of the hearing at least 60 days prior to the hearing to the county attorney who prosecuted the most recent triggering offense, the victim advocate, and the victim or victim's family, the department of safety sex offender unit, the department of corrections, and permit those parties to be heard on the petition. If the most recent triggering conviction is an out of state conviction, notice shall be given to the county

attorney in the county where the offender is currently residing. Prior to any decision granting the petition, the court shall provide the victim or victim's family with the opportunity to address the court. The victim or victim's family may appear personally, or through a representative, or may provide a written statement to reasonably express his or her views concerning the offense, the person responsible, and the need for maintaining the registration requirement. The judge shall consider the statements of the victim or victim's family pursuant to this section when rendering a decision regarding the petition. The judge shall grant the petition, after a hearing, only where, in the opinion of the court, the offender has proven by clear and convincing evidence that he or she no longer poses a risk sufficient to justify continued registration and is not a danger to the public.

VI. Registration of any juvenile required to register pursuant to RSA 651-B:1, XI(a)(3) or (4) shall end when the juvenile turns 17 years of age unless the court which adjudicated the juvenile as a delinquent retains jurisdiction over the juvenile pursuant to RSA 169-B:4, V, in which case registration of the juvenile shall end when the court terminates jurisdiction over the juvenile's case. When the registration of a juvenile terminates, the department shall remove information relating to the juvenile from the SOR system and records of the juvenile's registration shall be handled in accordance with RSA 169-B:35 and RSA 169-B:36.

**III. Amend RSA 651-B:10, I to read as follows:**

I. Any offender required to register for an offense committed in another state, country, territory, or tribal territory, or under federal law that is determined to be reasonably equivalent offense to an offense listed in RSA 651-B:1, V(A) or RSA 651-B:1, VII(a) or (b) may appeal that determination to the commissioner. The offender shall, within 10 days of notification, request a hearing on the matter before the commissioner. If such a request is made, the commissioner shall promptly schedule and conduct a hearing pursuant to rules adopted under RSA 541-A. ~~The offender~~ Either party shall have the right to appeal the commissioner's decision in superior court.

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

# Voting Sheets





HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1318

BILL TITLE: relative to sex offender registration.

DATE: 3/1/16

LOB ROOM: 204

MOTIONS: OTP, OTPIA ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. BARNES Seconded by Rep. MORCLIPART AM Vote: 13 - 1 way,  
years  
Adoption of Amendment # 2016 - 0819H voice vote

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_  
 Amendment Adopted  Amendment Failed

MOTIONS: OTP, OTPIA ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. BARNES Seconded by Rep. PATELAKUS AM Vote: 13 YAYS  
2 ways.  
Adoption of Amendment # 2016 - 0819H

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_  
 Amendment Adopted  Amendment Failed

CONSENT CALENDAR:  YES  NO  
(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Dustin M. Ad.  
Committee Clerk



2016 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 1318 Title: \_\_\_\_\_

PH Date: 2 1 17 1 16 Exec Session Date: 3 1 1 1 16

Motion: OTLR. MR. Barnes By Sec. Pantelakos Amendment #: 2016-0819H

MEMBER	YEAS	NAYS
Tholl, John E., Chairman	ABSENT	
Welch, David A., V Chairman	1	
Fields, Dennis H., Clerk	1	
Fesh, Robert M.	ABSENT	
Marston, Dick	1	
Burt, John A.		1
Sweeney, Shawn P.	<del>ABSENT</del> ONE	1
Barnes, Arthur E.	1	
Comeau, Ed	1	
Fisher, Robert Z.	ABSENT	
Martin, John F.	1	
Parker, Harold B.	ABSENT	
Green, Dennis	1	
Pantelakos, Laura C.	1	
Berube, Roger R.	ABSENT	
Robertson, Timothy N.	1	
Cushing, Robert R.	1	
Hirsch, Geoffrey D.	1	
O'Hearne, Andrew S.	1	
Mangipudi, Latha D.	1	
DiSesa, Len	ABSENT	
<b>TOTAL VOTE:</b>		

13 yeas 2 nays

# Committee Report

**CONSENT CALENDAR**

**March 1, 2016**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Criminal Justice and Public Safety to  
which was referred HB 1318,**

**AN ACT relative to sex offender registration. Having  
considered the same, report the same with the following  
amendment, and the recommendation that the bill  
OUGHT TO PASS WITH AMENDMENT.**

**Rep. Arthur Barnes**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1318
Title:	relative to sex offender registration.
Date:	March 1, 2016
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2016-0819h

### STATEMENT OF INTENT

This bill changes the circumstances and criteria under which certain sex offenders may petition to have their name removed from the sex offender registry public list and be relieved from the requirement of continued registration. The bill attempts to correct the constitutional violations brought to light in the New Hampshire Supreme Court opinion of John Doe v. State of New Hampshire issued February 12, 2015. In 1987, John Doe pleaded guilty to two counts of aggravated felonious sexual assault. He was sentenced to two and a half to five years' imprisonment, which was deferred for two years. He was placed on probation for four years. As part of his sentence, the he was required to attend sex counseling, which he did weekly for two years. In August 1990, his probation was terminated. On January 1, 1993, he became subject to registration as a sex offender. Sometime after 2006 he sought a declaratory judgment in superior court that RSA chapter 651-B is unconstitutional as applied it him because it violates the prohibition against retrospective laws and the Due Process Clause of the New Hampshire Constitution. The trial court ruled the act did not violate the Ex Post Facto Clause because the legislature intended the act to be regulatory, and any punitive effects of the act did not override this regulatory purpose by the clearest proof. The court also stated that it could not find the act had a punitive effect because the state's laws are presumed constitutional. This lead to an appeal the New Hampshire Supreme Court. Quoting from the judgment: "In summary, our analysis leads us to conclude that RSA chapter 651-B has a punitive effect as applied to the petitioner. We recognize the important interests that the legislature seeks to further with this statute, but in our view, the punitive effect of the current act is enough to overcome any non-punitive legislative intent as to this petitioner. Absent the lifetime-registration-without-review provision, we would not find the other effects of the act sufficiently punitive to overcome the presumption of its constitutionality. Accordingly, to prevent an untoward result that would substantially undermine the act's public protection goals, we conclude that the act can be enforced against the petitioner consistently with the constitutional probation against retrospective laws only if he is promptly given as opportunity for either a court hearing, or an administrative hearing subject to judicial review, at which he is permitted to demonstrate that he no longer poses a risk sufficient to justify continued registration. If the hearing results in a finding that he has made the required showing that he is hot a danger to the public' he must be relieved from the requirements of registration. If after such a hearing, it is determined that he has not made the required showing, he must continue to comply with the act, but thereafter he must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary." This bill seeks to resolve the constitutional issues with the law.

Vote 13-2.

Original: House Clerk

Cc: Committee Bill File

Rep. Arthur Barnes  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## CONSENT CALENDAR

### Criminal Justice and Public Safety

#### **HB 1318, relative to sex offender registration. OUGHT TO PASS WITH AMENDMENT.**

Rep. Arthur Barnes for Criminal Justice and Public Safety. This bill changes the circumstances and criteria under which certain sex offenders may petition to have their name removed from the sex offender registry public list and be relieved from the requirement of continued registration. The bill attempts to correct the constitutional violations brought to light in the New Hampshire Supreme Court opinion of John Doe v. State of New Hampshire issued February 12, 2015. In 1987, John Doe pleaded guilty to two counts of aggravated felonious sexual assault. He was sentenced to two and a half to five years' imprisonment, which was deferred for two years. He was placed on probation for four years. As part of his sentence, the he was required to attend sex counseling, which he did weekly for two years. In August 1990, his probation was terminated. On January 1, 1993, he became subject to registration as a sex offender. Sometime after 2006 he sought a declaratory judgment in superior court that RSA chapter 651-B is unconstitutional as applied it him because it violates the prohibition against retrospective laws and the Due Process Clause of the New Hampshire Constitution. The trial court ruled the act did not violate the Ex Post Facto Clause because the legislature intended the act to be regulatory, and any punitive effects of the act did not override this regulatory purpose by the clearest proof. The court also stated that it could not find the act had a punitive effect because the state's laws are presumed constitutional. This lead to an appeal the New Hampshire Supreme Court. Quoting from the judgment: "In summary, our analysis leads us to conclude that RSA chapter 651-B has a punitive effect as applied to the petitioner. We recognize the important interests that the legislature seeks to further with this statute, but in our view, the punitive effect of the current act is enough to overcome any non-punitive legislative intent as to this petitioner. Absent the lifetime-registration-without-review provision, we would not find the other effects of the act sufficiently punitive to overcome the presumption of its constitutionality. Accordingly, to prevent an untoward result that would substantially undermine the act's public protection goals, we conclude that the act can be enforced against the petitioner consistently with the constitutional probation against retrospective laws only if he is promptly given as opportunity for either a court hearing, or an administrative hearing subject to judicial review, at which he is permitted to demonstrate that he no longer poses a risk sufficient to justify continued registration. If the hearing results in a finding that he has made the required showing that he is not a danger to the public' he must be relieved from the requirements of registration. If after such a hearing, it is determined that he has not made the required showing, he must continue to comply with the act, but thereafter he must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary." This bill seeks to resolve the constitutional issues with the law. **Vote 13-2.**

Original: House Clerk

Cc: Committee Bill File

## COMMITTEE REPORT

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1318</b>
Title:	<b>relative to sex offender registration.</b>
Date:	<b>March 1, 2016</b>
Consent Calendar:	<b>CONSENT</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 2016-0819h</b>

### STATEMENT OF INTENT

This bill changes the circumstances and criteria under which certain sex offenders may petition to have their name removed from the sex offender registry public list and be relieved from the requirement of continued registration. The bill attempts to correct the constitutional violations brought to light in the New Hampshire Supreme Court judgment JOHN DOE V. STATE OF NEW HAMPSHIRE issued February 12, 2015. In 1987, John Doe pleaded guilty to two counts of aggravated felonious sexual assault. He was sentenced to two and a half to five years' imprisonment, which was deferred for two years. He was placed on probation for four years. As part of his sentence, the he was required to attend sex counseling, which he did weekly for two years. In August 1990, his probation was terminated. On January 1, 1993, he became subject to registration as a sex offender. Sometime after 2006 he sought a declaratory judgment in superior court that RSA chapter 651-B (the act) is unconstitutional as applied it him because it violates the prohibition against retrospective laws and the Due Process Clause of the New Hampshire Constitution. The trail court ruled the act did not violate the Ex Post Facto Clause because the legislature intended the act to be regulatory, and any punitive effects of the act did not override this regulatory purpose by the clearest proof. The court also stated that it could not find the act had a punitive effect because the state's laws are presumed constitutional. This lead to an appeal the New Hampshire Supreme Court. Quoting from the judgment: In summary, our analysis leads us to conclude that RSA chapter 651-B has a punitive effect as applied to the petitioner. We recognize the important interests that the legislature seeks to further with this statute, but in our view, the punitive effect of the current act is enough to overcome any non-punitive legislative intent as to this petitioner. Absent the lifetime-registration-without-review provision, we would not find the other effects of the act sufficiently punitive to overcome the presumption of its constitutionality. Accordingly, to prevent an untoward result that would substantially undermine the act's public protection goals, we conclude that the act can be enforced against the petitioner consistently with the constitutional probation against retrospective laws only if he is promptly given as opportunity for either a court hearing, or an administrative hearing subject to judicial review, at which he is permitted to demonstrate that he no longer poses a risk sufficient to justify continued registration. If the hearing results in a finding that he has made the required showing that he is not a danger to the public' he must be relieved from the requirements of registration. If after such a hearing, it is determined that he has not made the required showing, he must continue to comply with the act, but thereafter he must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary. Thus the bill.

Vote 13-2.

Original: House Clerk  
Cc: Committee Bill File

